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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 vs)

12 RONALD DEAN UDY,)

13 Defendant.)
14 _____

CASE NO. 2:10-CR-290-RHL-PAL

PLEA MEMORANDUM

15 The United States of America, by and through Daniel G. Bogden, United States Attorney,
16 and Daniel R. Schiess, Assistant United States Attorney, the defendant, RONALD DEAN UDY, and
17 the defendant's attorney, Chad Noakes, submit this plea memorandum.

18 **I. PLEA AGREEMENT**

19 The United States and the defendant have reached the following plea agreement, which is not
20 binding on the court:

21 **A. The Plea**

22 1. Defendant will plead guilty to the Indictment, charging Defendant Conspiracy to
23 Commit Bank Fraud, in violation of Title 18, United States Code, Section 1349. Defendant also
24 agrees to the forfeiture of the property set forth in the Forfeiture Allegations of the Indictment and Plea
25 Memorandum.
26

1 **B. Additional Charges**

2 2. The United States will bring no additional charge or charges against the defendant
3 arising out of the investigation in the District of Nevada that culminated in this Plea Memorandum.

4 **C. Sentencing Guideline Calculations**

5 3. Defendant understands that the Court is required to consider United States Sentencing
6 Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) among other factors in determining the
7 defendant’s sentence. Defendant understands that the Sentencing Guidelines are advisory, and that
8 after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose
9 any reasonable sentence up to the maximum set by statute for the crimes of conviction.

10 4. The parties agree that the following calculations of the United States Sentencing
11 Guidelines apply:

12	Base Offense Level --	7
13	Loss Amount --	18
	(\$2,500,000 to \$7,000,000)	
14	Loss Affecting Financial Institution	2
15	Acceptance of Responsibility –	<u>-3</u>
16	TOTAL	24

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18 5. Pursuant to U.S.S.G. §3E1.1(a), the United States will recommend that the defendant
19 receive a two (2) level adjustment for acceptance of responsibility unless Defendant (a) fails to make
20 a complete factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court or
21 probation officers; (c) denies involvement in the offense or provides conflicting statements regarding
22 defendant’s involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;
23 (f) fails to appear in court; or (g) violates the conditions of defendant’s pretrial release conditions.

24 6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make
25 a motion for an additional one-level adjustment for acceptance of responsibility prior to sentencing
26 if the defendant timely notifies the United States of the defendant’s intention to plead guilty, thereby

1 permitting the United States to avoid preparing for trial and allowing for the efficient allocation of
2 resources.

3 7. Defendant's Criminal History Category will be determined by the court.

4 **D. Other Sentencing Matters**

5 8. The United States will recommend that the defendant be sentenced to the low end of
6 the Guideline range unless the defendant commits any of the acts that could result in a loss of the
7 downward adjustment for acceptance of responsibility.

8 9. Defendant may seek and the United States may oppose any downward adjustment
9 pursuant to 18 U.S.C. § 3553.

10 10. The parties agree that the Guideline calculations are based on information now known
11 and could change upon investigation by the United States Probation Office. It is possible that factors
12 unknown or unforeseen by the parties to the plea agreement may be considered in determining the
13 offense level, specific offense characteristics, and other related factors. In that event, the defendant
14 will not withdraw the defendant's plea of guilty. Both defendant and the United States are free to: (a)
15 supplement the facts by supplying relevant information to the United States Probation Office and the
16 court, and (b) correct any and all factual misstatements relating to the calculation of the sentence.

17 11. The stipulations in this agreement do not bind either the United States Probation
18 Office or the Court. Both defendant and the United States are free to: (a) supplement the facts by
19 supplying relevant information to the United States Probation Office and the court, and (b) correct
20 any and all factual misstatements relating to the calculation of the sentence.

21 12. The defendant reserves the right to argue for a sentence to be imposed concurrently
22 with the sentence he is presently serving in the State of Utah. The United States will stand silent on
23 this issue, unless it needs to correct any inaccuracy material to the Court's decision on this issue.

24 **E. Fines and Special Assessment**

25 13. Defendant agrees that the Court may impose a fine due and payable immediately upon
26 sentencing.

1 14. Defendant will pay the special assessment of \$100 per count of conviction at the time
2 of sentencing.

3 **F. Forfeiture**

4 15. Defendant knowingly and voluntarily agrees to the abandonment, the civil
5 administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture money judgment of
6 \$4,150,000 in United States Currency ("property").

7 16. Defendant knowingly and voluntarily agrees to abandon or to forfeit the property to
8 the United States.

9 17. Defendant knowingly and voluntarily agrees to relinquish all right, title, and interest
10 in the property.

11 18. Defendant knowingly and voluntarily agrees to waive the defendant's right to any
12 abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial forfeiture
13 proceedings, or any criminal forfeiture proceedings ("proceedings") of the property.

14 19. Defendant knowingly and voluntarily agrees to waive service of process of any and
15 all documents filed in this action or any proceedings concerning the property arising from the facts
16 and circumstances of this case.

17 20. Defendant knowingly and voluntarily agrees to waive any further notice to the
18 defendant, the defendant's agents, or the defendant's attorney regarding the abandonment or the
19 forfeiture and disposition of the property.

20 21. Defendant knowingly and voluntarily agrees not to file any claim, answer, petition,
21 or other documents in any proceedings concerning the property.

22 22. Defendant knowingly and voluntarily agrees to waive the statute of limitations, the
23 CAFRA requirements, Fed. R. Crim. P. 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due
24 process requirements of any abandonment proceeding or any forfeiture proceeding concerning the
25 property.

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1 23. Defendant knowingly and voluntarily agrees to waive the defendant's right to a jury
2 trial on the forfeiture of the property.

3 24. Defendant knowingly and voluntarily agrees to waive (a) all constitutional, legal,
4 and equitable defenses to, (b) any constitutional or statutory double jeopardy defense or claim
5 concerning, and (c) any claim or defense under the Eighth Amendment to the United States
6 Constitution, including, but not limited to, any claim or defense of excessive fine in any proceedings
7 concerning the property.

8 25. Defendant knowingly and voluntarily agrees to the entry of an Order of Forfeiture of
9 the property to the United States.

10 26. Defendant knowingly and voluntarily agrees and understands the abandonment, the
11 civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property
12 shall not be treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any
13 other penalty this Court may impose upon the defendant in addition to the abandonment or the
14 forfeiture.

15 **G. Waiver of Appeal**

16 27. In exchange for the concessions made by the United States in this plea agreement,
17 Defendant knowingly and expressly waives the right to appeal any sentence that is imposed within the
18 applicable Sentencing Guideline range as calculated by the Court, further waives the right to appeal
19 the manner in which that sentence was determined on the grounds set forth in Title 18, United States
20 Code, Section 3742, and further waives the right to appeal any other aspect of the conviction or
21 sentence, including any order of restitution and forfeiture. Defendant reserves only the right to appeal
22 any portion of the sentence that is an upward departure from the applicable Sentencing Guideline
23 range calculated by the Court.

24 28. Defendant also waives all collateral challenges, including any claims under 28 U.S.C.
25 § 2255, to the defendant's conviction, sentence and the procedure by which the court adjudicated guilt
26 and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

1 29. Notwithstanding the stipulations in this agreement, the parties are free to argue on
2 appeal and collateral review that the Court's sentencing guidelines calculations are not error.
3 However, each party agrees to maintain its view that the calculation in paragraph I.C. are consistent
4 with the facts of this case.

5 **H. Additional Promises, Agreements, and Conditions**

6 30. In exchange for the United States entering into this agreement, Defendant agrees that
7 (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against the defendant
8 under Fed. R. Evidence. 801(d)(2)(A) in the following circumstances: (1) for any purpose at
9 sentencing; and (2) in any subsequent proceeding, including a trial in the event the defendant does not
10 plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any evidence, argument or
11 representation offered by or on the defendant's behalf; and (b) the defendant expressly waives any and
12 all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in
13 Section IV of the Plea Agreement to the extent set forth above.

14 31. The parties agree that no promises, agreements, and conditions have been entered into
15 other than those set forth in this plea memorandum, and will not be entered into unless in writing and
16 signed by all parties.

17 **I. Limitations**

18 32. This Plea Agreement is limited to the United States Attorney's Office for the District
19 of Nevada and cannot bind any other federal, state or local prosecuting, administrative, or regulatory
20 authority. But, this Plea Memorandum does not prohibit the United States through any agency thereof,
21 the United States Attorney's office for the District of Nevada, or any third party from initiating or
22 prosecuting any civil proceeding directly or indirectly involving defendant, including but not limited
23 to, proceedings under the False Claims Act relating to potential civil monetary liability or by the
24 Internal Revenue Service relating to potential tax liability.

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1 **J. Cooperation**

2 33. Defendant agrees, if requested by the United States, to provide complete and truthful
3 information and testimony concerning Defendant's knowledge of all other persons who are
4 committing or have committed offenses against the United States or any state, and agrees to cooperate
5 fully with the United States and any state and local agencies in the investigation and prosecution of
6 such persons. Defendant agrees that the information provided can be used against the defendant to
7 establish relevant conduct for sentencing purposes.

8 34. In the event the United States Attorney decides in the sole discretion of the United
9 States Attorney that the assistance provided by Defendant amounts to "substantial assistance" pursuant
10 to U.S.S.G. § 5K1.1, the United States will timely file a motion for downward departure from the
11 applicable Guideline calculation. The Court has the sole discretion to grant such a motion.

12 35. Defendant agrees that a motion for downward departure based on substantial
13 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to
14 be substantial assistance by the United States Attorney. The United States has made no promise,
15 implied or otherwise, that Defendant will be granted a departure for substantial assistance. Further,
16 no promise has been made that such a motion will be made even if Defendant complies with the terms
17 of this Plea Agreement in all respects but has been unable to provide substantial assistance as
18 determined in the sole discretion of the United States Attorney.

19 36. The United States agrees to consider the totality of the circumstances, including but
20 not limited to, the following factors, in determining whether, in the sole discretion of the United States
21 Attorney, Defendant has provided substantial assistance which would merit a motion by the United
22 States for a downward departure from the applicable Guideline:

- 23 a. The United States' evaluation of the significance and usefulness of
24 Defendant's assistance;
- 25 b. The truthfulness, completeness, and reliability of any information or testimony
26 provided by Defendant;

- 1 c. The nature and extent of Defendant's assistance;
- 2 d. Any injury suffered, or any danger or risk of injury to Defendant or
- 3 Defendant's family resulting from Defendant's assistance; and
- 4 e. The timeliness of Defendant's assistance.

5 37. Defendant agrees that in the event the United States files a downward departure
6 motion based upon Defendant's substantial assistance, the United States reserves the right to make
7 a specific recommendation to the Court regarding the extent of such a departure. Defendant
8 understands and agrees that the final decision as to how much of a departure, if any, is warranted rests
9 solely with the Court.

10 38. Defendant agrees that if the United States determines that Defendant has not provided
11 full and truthful cooperation, or has committed any federal, state or local crime between the date of
12 this agreement and defendant's sentencing, or has otherwise violated any provision of this agreement,
13 then (a) the agreement and any of its obligations hereunder may be voided by the United States in its
14 sole discretion, (b) defendant may not withdraw the guilty plea, and (c) defendant shall be subject to
15 prosecution for all federal criminal offenses of which the United States has knowledge, including but
16 not limited to, perjury and obstruction of justice. Any such prosecution may be based upon any
17 information provided by Defendant or leads derived therefrom.

18 **II. PENALTY**

19 39. The maximum penalty for a violation of Title 18, United States Code, Section 1349,
20 is imprisonment for not more than thirty (30) years, a fine of not more than \$1,000,000, or both.
21 Defendant is subject to supervised release for a term of not greater than five (5) years.

22 40. Supervised release is a period of time following imprisonment during which
23 defendant will be subject to various restrictions and requirements. Defendant understands that if
24 defendant violates one or more of the conditions of any supervised release imposed, defendant may
25 be returned to prison for all or part of the term of supervised release, which could result in defendant
26 serving a total term of imprisonment greater than the statutory maximum stated above.

1 41. Defendant must pay a special assessment of one-hundred dollars (\$100.00) for each
2 count of conviction.

3 42. Defendant is required to pay for the costs of imprisonment, probation, and supervised
4 release, unless the defendant establishes that the defendant does not have the ability to pay such costs,
5 in which case the court may impose an alternative sanction such as community service.

6 **III. ELEMENTS**

7 43. The essential elements of the offense of Conspiracy to Commit Bank Fraud, in
8 violation of 18 U.S.C. § 1349, are as follows:

9 First, There was an agreement between two or more persons to commit at least one
10 crime as charged in the indictment, in this case, Bank Fraud; and

11 Second, the defendant became a member of the conspiracy knowing of at least one
12 of its objects and intending to help accomplish it.

13 IV. FACTS

14 44. Defendant is pleading guilty because the defendant is guilty of the charged offense.

15 45. In pleading to the offense, Defendant acknowledges that if the defendant elected to
16 go to trial instead of entering this plea, the United States could prove facts sufficient to establish
17 defendant's guilt beyond a reasonable doubt.

18 46. Defendant specifically admits and declares under penalty of perjury that all of the
19 facts set forth below are true and correct:

20 **Conspiracy to Commit Bank Fraud**

21 47. In or about May 2007, in the Federal District of Nevada and elsewhere, Defendant
22 conspired with others to commit the crime of bank fraud, a violation of Title 18, United States
23 Code, Section 1344.

48. The object of the conspiracy was for the defendant and others to fraudulently obtain mortgage loans from Washington Mutual Bank and use some of the proceeds from the mortgage loans to unjustly enrich themselves.

1 54. Defendant acknowledges that defendant has been advised, and understands, that
2 by entering a plea of guilty the defendant is waiving, that is, giving up, certain rights guaranteed to
3 the defendant by law and by the Constitution of the United States. Specifically, Defendant is
4 giving up:

- 5 a. The right to be indicted by a federal grand jury;
- 6 b. The right to proceed to trial by jury on the original charges, or to a trial by
7 a judge if defendant and the United States both agree;
- 8 c. The right to confront the witnesses against the defendant at such a trial,
9 and to cross-examine them;
- 10 d. The right to remain silent at such trial, with such silence not to be used
11 against defendant in any way;
- 12 e. The right, should defendant so choose, to testify in defendant's own behalf
13 at such a trial;
- 14 f. The right to compel witnesses to appear at such a trial, and to testify in
15 defendant's behalf; and
- 16 g. The right to have the assistance of an attorney at all stages of such
17 proceedings.

18 55. Defendant, defendant's attorney, and the attorney for the United States
19 acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to
20 by and between the parties, and that no other promise has been made or implied by either the
21 defendant, the defendant's attorney, or the attorney for the United States.

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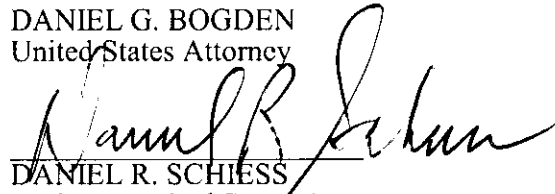
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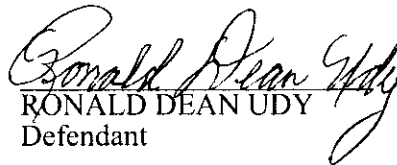
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